

Dated July 23, 2003

### **Comments of the Telephone Association of Maine**

The Telephone Association of Maine (TAM) offers the following comments regarding *Petition of RCC Minnesota, Inc. for Redefinition of Rural Telephone Company Service Areas*, CC Docket No. 96-45, filed on June 24, 2003 (Petition) on behalf of its member companies. TAM is comprised of all 22 Independent Telephone Companies (ITCs) in Maine.

Throughout the proceeding before the Maine Public Utilities Proceeding (MPUC) to consider whether RCC Minnesota, Inc. (RCC) should be allowed Eligible Telecommunications Carrier (ETC) status in Maine, TAM argued that it would be inappropriate to amend any of its member companies' service areas simply to avoid the obvious inability of RCC to meet the statutory requirement under the Telecommunications Act of 1996 ("TelAct") that a company must be able to provide universal service "throughout the service area for which the designation is received"<sup>1</sup> where a service area for a rural local exchange carrier (LEC) is defined as being "such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company."<sup>2</sup> The MPUC, incorrectly shifted the burden of proof away from RCC to show, as the moving party, why damaging the business interests of ITCs in Maine by forcibly redrawing their service territories and establishing a precedent to allow any potential ETC to do the same, was in the public interest. Instead, the MPUC simply stated that the ITCs had not produced cost data, and dismissed TAM's claims of potential harm in allowing ETCs to force the redrawing of service territories for ITCs. The Maine PUC further found that providing federal subsidies for wireless competition in Maine was in the public interest regardless of the potential long term impacts on ITCs which will result from forcibly redrawing the ITCs' service territories.

#### **Impacts on Business Planning.**

If the Commission allows RCC, through their application for ETC status, to bring about the forced gerrymandering of an ITCs service territories along boundary lines which bear no resemblance to any actual economically responsible service areas, a door

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<sup>1</sup> 47 USC § 214(e)(1).

<sup>2</sup> 47 USC § 214(e)(5).

will be opened in Maine which will not be able to be closed. This blatant use of regulatory arbitrage will establish the clear precedent that would allow any and all potential competitors, especially competing wireless providers, to forcibly redraw an ITCs service territory in the name of obtaining ETC status. Each time this occurs, it will erode the ability of the underlying carrier to form study areas and service territories based on economically sound principles, and instead companies will be forced to rely on the limitations of competitors' inability to serve all customers in an area to determine what zones can constitute service areas. This takes away a vital ability of ITCs to manage their own businesses in the most economically sound manner possible and instead places control of future business plans in the hands of State Commissions and potential competitors. TAM does not believe that this was the purpose of the TelAct.

### **Relationship to the Goals of the TelAct.**

Throughout the TelAct, there are provisions aimed specifically at ITCs which recognize the unique nature of small rural telephone companies providing service in high cost areas. It is because of this reality that there is a requirement that, in rural telephone company territories, State Commissions must expressly find that granting of ETC status is in the public interest. It is also the reason there is a Rural Exemption in the TelAct which offers protection from the requirement of unbundling in ITC territories. The reason for these added requirements is to ensure that actions taken under the TelAct to promote competition do so in a manner which will not harm the ability of rural carriers to provide service in high cost areas at rates which are comparable to those rates being charged in non-rural areas. It is for this reason as well that the service territories in rural areas are defined by their study area, as opposed to service territories in Regional Bell Operating Company (RBOC) areas which are defined as " a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms."<sup>3</sup> Congress granted State Commissions the ability to simply redraw service territories for RBOCs as they wished for universal service purposes. By adding the additional level of definition and the requirement that the recommendation of the Joint Board be considered in determining how to redraw service territories for rural telephone companies, Congress made it clear that this process should be more than a simple rubber stamp by the State Commissions to any requests potential ETCs may have regarding twisting existing service area boundaries to meet the competitors needs regardless of the needs of the underlying rural carrier.

### **Timing and Disposition of Issues Raised**

The Joint Board is currently considering the current universal service structure, and it is not clear where the Joint Board will finally come out with regard to the issue of gerrymandering rural telephone company service areas to allow competitive providers to

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<sup>3</sup> Id.

draw from the universal service fund. Given that the TelAct explicitly states that the recommendations of the Joint Board must be considered in determining whether to redefine a rural telephone company's service territory, TAM requests that the Commission deny RCC's request at this time and allow RCC to refile their request once the Joint Board has made a final recommendation on this matter.

Sincerely,

Benjamin Sanborn, Esq.  
External Affairs Manager  
Telephone Association of Maine